

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

\*\*\*\*\*  
Stephen L. D’Angelo, \*  
Plaintiff \*  
\*  
v. \*  
\*  
New Hampshire Supreme Court, \*  
Brian Germane, Esq., \*  
Defendants \*  
\*\*\*\*\*

**MOTION TO DISMISS BY THE NEW HAMPSHIRE SUPREME COURT**

Defendant, the New Hampshire Supreme Court, by and through counsel, the office of the Attorney General, hereby move to dismiss the complaint. In support thereof, Defendant states as follows.

1. The complaint and documents of which the court should take judicial notice demonstrate that at bottom, Plaintiff is asking the federal court to vacate and reverse orders of the Derry Family Court (“DFC”) that were appealed to the New Hampshire Supreme Court (“NHSC”) but that were declined by the NHSC, and/or to require the DFC to provide a further evidentiary hearing. *See* Complaint and NHSC order declining Discretionary Appeal, attached as Exhibit A. While D’Angelo complains mightily and at length about what the DFC did, in this complaint he has not named the DFC, but only the NHSC. He characterizes his complaint as arising under the 5<sup>th</sup> and 14<sup>th</sup> Amendment due process clause and Section 1983, based on the fact that the NHSC rules provide only a discretionary appeal, not a mandatory appeal under Supreme Court Rule 3. *See* Compl. ¶ 98 and Counts I, II, III. However he seeks to enjoin the DFC orders and he also requests that this court require the DFC to provide an evidentiary hearing. *See* Compl., Counts I, II, III and prayer for relief. However, in any event,

the DFC order is final, as D'Angelo's appeal to the NHSC was declined. *See* Compl. ¶ 105. 106, 115, 116, and Exhibit A.

2. As found by the Magistrate Judge in the Report and Recommendation issued on November 8, 2012,<sup>1</sup> (*see* ECF Dkt # 8) the Plaintiff's claims should be dismissed because the *Rooker-Feldman* doctrine precludes a federal district court from reviewing a final judgment of a state court.

3. Plaintiff's claims should be dismissed because 42 U.S.C. § 1983 bars Plaintiff's claims seeking to enjoin state court action against New Hampshire Supreme Court.

4. Plaintiff's claims should be dismissed because the Eleventh Amendment bars Plaintiff's claims against New Hampshire Supreme Court.

5. Plaintiff's claims should be dismissed because absolute immunity protects the New Hampshire Supreme Court from civil liability for judicial acts.

6. Plaintiff's claims should be dismissed because the complaint fails to state a cause action as the United States Constitution gives no right to a mandatory appeal in a state court civil lawsuit.

7. A memorandum of law is attached.

8. Concurrence is not required as this is a potentially dispositive motion.

WHEREFORE, for the reasons stated herein, Defendant respectfully request that the court order as follows:

- A. That the Complaint be dismissed in its entirety;
- B. For such other and further relief as is just and necessary.

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<sup>1</sup> This Motion to Dismiss will be moot if the Report and Recommendation is adopted by the court. However, as the complaint was served, the NHSC defendant files this motion to dismiss to avoid any possibility that plaintiff could claim the defendant was in default and to suggest additional legal basis for dismissal of plaintiff's complaint.

Respectfully submitted,

NEW HAMPSHIRE SUPREME COURT

By their attorney,

MICHAEL A. DELANEY  
ATTORNEY GENERAL

Date: November 19, 2012

/s/ Nancy J. Smith  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on the following persons on this date and in the manner specified herein: Conventionally served by first class mail to Stephen D'Angelo and by the court's ECF filing on all other counsel of record.

Date: November 19, 2012

/s/ Nancy J. Smith  
Nancy J. Smith  
NH Bar # 9085